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June 18, 1958

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CONCORD, N.H.

Mr. James J. Barry, Commissioner
Department of Public Welfare
State House Annex
Concord, New Hampshire

Re: OASI Status of Cemetery
Custodian of Bedford Town
Cemeteries

Dear Mr. Barry:

Your letter of June 5, 1958 relative to the
custodian of the Bedford town cemeteries has been received.

You ask whether the custodian can properly
be considered as an independent contractor for OASI purposes.
You advise that the custodian does very little of the work
himself and that most of the labor is performed by persons
whom he employs in connection with his fuel oil business.

You further advise that the town does not
reserve the right to control the details of his performance
of the work. You state that it is your opinion that the in-
dividual in question is an independent contractor and that
his men are his own employees rather than the employees of
the town.

We are of the opinion that your conclusion is
proper.

In determining whether or not an individual
is an employee or an independent contractor, the test is the
right on the part of the person or instrumentality for whom
services are to be performed to control the actions of the
individual doing the work. "If there is no such right the
relation does not exist." Mancak v. Company, 86 N.H. 104.

Since the right to control the details of
employment does not exist, neither can the employer - employee
relationship.

Very truly yours,

Elmer T. Bourque
Assistant Attorney General

ETB:w